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SEP 13
CHARLES ELMO

No. 234

In the Supreme Court of the United States

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA, PETITIONER

v.

HENRY PRENTISS & COMPANY, INC.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM OF THE SOLICITOR GENERAL SUBMITTING AFFIDAVIT OF LEON E. SPENCER

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MEMORANDUM OF THE SOLICITOR GENERAL SUBMITTING AFFIDAVIT OF LEON E. SPENCER

On August 27, 1932, counsel for the respondent filed in this Court an affidavit in which it was stated that Leon E. Spencer, an Assistant United States Attorney, had agreed with counsel for the respondent that they would be notified if the Government decided to file a petition for certiorari in this case, and that this agreement had not been complied with.

Mr. Spencer has executed an affidavit, which is set out in full below. The original of this affidavit has been filed with the Clerk of this Court.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

SEPTEMBER, 1932.

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AFFIDAVIT OF LEON E. SPENCER

STATE OF NEW YORK,
County of New York, ss:

LEON E. SPENCER, being duly sworn according to law upon oath deposes and says:

On April 11, 1932, the Circuit Court of Appeals for the Second Circuit handed down its opinion in the case of *Henry Prentiss & Co., Inc.* v. *United States.* The order for mandate was entered in the office of the Clerk of the Circuit Court of Appeals on April 18, 1932. On April 25, 1932, I spoke by telephone with Mr. Joseph F. Murray, of counsel for Henry Prentiss & Co., Inc., and requested that he consent to the entry of an order in the Circuit Court of Appeals staying the issuance of the order on mandate for ninety days, which would cover the time within which certiorari could be applied for. Mr. Murray consented to the entry of this order and made no request that he be advised if the Government intended to make an application for a writ of certiorari.

It is my recollection that at this time I asked Mr. Murray whether counsel for Henry Prentiss & Co., Inc., intended to apply for a review of the decision of the Circuit Court of Appeals, and that I was advised that that question had not been decided but that if the Government applied counsel for Henry Prentiss & Co., Inc., probably would take the same action.

Neither at this time nor at any other time did Mr. Murray ask that I advise him in case the Government decided to file an application for a writ of

certiorari, and at no time did I tell Mr. Murray that I would inform him of the action to be taken by the Government. I have read the affidavit which has been filed by Mr. Murray in the Supreme Court of the United States in which it is stated that I told Mr. Murray that I would advise him in case the Government decided to apply for a writ of certiorari. As I have stated above, I made no such statement and entered into no agreement to advise Mr. Murray of the Government's action.

(Signed) LEON E. SPENCER.

STATE OF NEW YORK,
County of New York, ss:

Subscribed to and sworn before me this 3rd day of September, 1932.

(Signed) ARMAND CHANKALIAN,
Notary Public.

[SEAL.] ARMAND CHANKALIAN,
Notary Public, New York Co.,
Clerk's No. 339, Reg. No. 3C426.

Commission expires March 30, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1932